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 EBAY INC., a Delaware corporation

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

EBAY INC., a Delaware corporation,
 Plaintiff,

v.

DOTCOM RETAIL LIMITED, a United
 Kingdom company; BEAUTYBAY.COM
 LIMITED, a United Kingdom company,
 Defendants.

Case No. CV-13-02853-SC

**PLAINTIFF EBAY INC.'S ANSWER TO
 DEFENDANTS' COUNTERCLAIM FOR
 DECLARATORY RELIEF**

Trial Date: None Set

Jury Trial Requested

DOTCOM RETAIL LIMITED, a United
 Kingdom company; BEAUTYBAY.COM
 LIMITED, a United Kingdom company,

Counterclaimants,

v.

EBAY INC., a Delaware corporation,
 Counterdefendant.

Plaintiff eBay Inc. ("eBay") answers the Counterclaim of Defendants Dotcom Retail Limited ("Dotcom") and BeautyBay.com Limited ("BeautyBay") (collectively, "Defendants") as follows:

1 1. As to paragraph 1 of Defendants' Counterclaim, this is a legal contention that
2 requires no response.

3 2. As to paragraph 2 of Defendants' Counterclaim, this is a legal contention that
4 requires no response.

5 3. As to paragraph 3 of Defendants' Counterclaim, this is a legal contention that
6 requires no response.

7 4. As to paragraph 4 of Defendants' Counterclaim, eBay denies the allegations in
8 paragraph 4.

9 5. As to paragraph 5 of Defendants' Counterclaim, eBay admits that Defendants
10 maintain and operate an e-commerce website at www.beautybay.com focused on skin-care and
11 beauty products and that Defendants have been using the marks BEAUTYBAY and BEAUTY
12 BAY (hereinafter the "BEAUTYBAY Marks") in conjunction with the above-mentioned
13 business. eBay is without sufficient knowledge or information to form a belief as to the truth of
14 the remaining allegations in paragraph 5, and on that basis denies them.

15 6. As to paragraph 6 of Defendants' Counterclaim, eBay admits that it is a Delaware
16 corporation with its principal place of business in San Jose, California. eBay further admits that it
17 provides an online marketplace for buyers and sellers to buy, sell, bid on, and/or trade goods and
18 services, and also provides online platforms, tools, and services to help individuals and small,
19 medium, and large merchants around the globe engage in online and mobile commerce. eBay
20 additionally admits that it offers merchants and individuals the ability to choose to list their
21 products and services online either through fixed price listings or an auction-style format. eBay
22 denies the remaining allegations in paragraph 6.

23 7. As to paragraph 7 of Defendants' Counterclaim, eBay admits that Defendants
24 previously operated an e-commerce website at www.fragrancebay.com called FragranceBay,
25 together with the related company FragranceBay.com Ltd. eBay further admits that Defendants
26 maintain and operate an e-commerce website at www.beautybay.com focused on skin-care and
27 beauty products and that Defendants have been using the BEAUTYBAY Marks in conjunction
28 with the above-mentioned business. eBay is without sufficient knowledge or information to form

1 a belief as to the truth of the remaining allegations in paragraph 7, and on that basis denies them.

2 8. As to paragraph 8 of Defendants' Counterclaim, eBay admits that Defendants
3 maintain and operate an e-commerce website at www.beautybay.com focused on skin-care and
4 beauty products, and that Defendants have been using the BEAUTYBAY Marks in conjunction
5 with the above-mentioned business. eBay is without sufficient knowledge or information to form
6 a belief as to the truth of the remaining allegations in paragraph 8, and on that basis denies them.

7 9. As to paragraph 9 of Defendants' Counterclaim, eBay is without sufficient
8 knowledge or information to form a belief as to the truth of the allegations in paragraph 9, and on
9 that basis denies them.

10 10. As to paragraph 10 of Defendants' Counterclaim, eBay is without sufficient
11 knowledge or information to form a belief as to the truth of the allegations in paragraph 10, and
12 on that basis denies them.

13 11. As to paragraph 11 of Defendants' Counterclaim, eBay is without sufficient
14 knowledge or information to form a belief as to the truth of the allegations in paragraph 11, and
15 on that basis denies them.

16 12. As to paragraph 12 of Defendants' Counterclaim, eBay admits that Defendants
17 advertise and draw customers to their beautybay.com website through the use of popular search
18 engines and social media platforms, such as Google and Facebook. eBay is without sufficient
19 knowledge or information to form a belief as to the truth of the remaining allegations in
20 paragraph 12, and on that basis denies them.

21 13. As to paragraph 13 of Defendants' Counterclaim, eBay admits that Defendants
22 advertise and draw customers to their beautybay.com website through the use of popular search
23 engines and social media platforms, such as Google and Facebook. eBay is without sufficient
24 knowledge or information to form a belief as to the truth of the remaining allegations in
25 paragraph 13, and on that basis denies them.

26 14. As to paragraph 14 of Defendants' Counterclaim, eBay admits that Defendants
27 advertise and draw customers to their beautybay.com website through the use of popular search
28 engines and social media platforms, such as Google and Facebook. eBay is without sufficient

1 knowledge or information to form a belief as to the truth of the remaining allegations in
2 paragraph 14, and on that basis denies them.

3 15. As to paragraph 15 of Defendants' Counterclaim, eBay is without sufficient
4 knowledge or information to form a belief as to the truth of the allegations in paragraph 15, and
5 on that basis denies them.

6 16. As to paragraph 16 of Defendants' Counterclaim, eBay is without sufficient
7 knowledge or information to form a belief as to the truth of the allegations in paragraph 16, and
8 on that basis denies them.

9 17. As to paragraph 17 of Defendants' Counterclaim, eBay admits that Defendants
10 previously operated an e-commerce website at www.fragrancebay.com called FragranceBay,
11 together with the related company FragranceBay.com Ltd. eBay further admits that
12 Fragrancebay.com Limited was incorporated in the United Kingdom in September 1999. eBay is
13 without sufficient knowledge or information to form a belief as to the truth of the remaining
14 allegations in paragraph 17, and on that basis denies them.

15 18. As to paragraph 18 of Defendants' Counterclaim, eBay denies the allegations in
16 paragraph 18.

17 19. As to paragraph 19 of Defendants' Counterclaim, eBay denies the allegations in
18 paragraph 19.

19 20. As to paragraph 20 of Defendants' Counterclaim, eBay denies the allegations in
20 paragraph 20.

21 21. As to paragraph 21 of Defendants' Counterclaim, eBay is without sufficient
22 knowledge or information to form a belief as to the truth of the allegations in paragraph 21, and
23 on that basis denies them.

24 22. As to paragraph 22 of Defendants' Counterclaim, eBay admits that Defendants
25 maintain and operate an e-commerce website at www.beautybay.com focused on skin-care and
26 beauty products and that Defendants have been using the BEAUTYBAY Marks in conjunction
27 with the above-mentioned business. eBay further admits that Defendants advertise and draw
28 customers to their beautybay.com website through the use of popular search engines and social

1 media platforms, such as Google and Facebook. eBay is without sufficient knowledge or
 2 information to form a belief as to the truth of the remaining allegations in paragraph 22, and on
 3 that basis denies them.

4 23. As to paragraph 23 of Defendants' Counterclaim, eBay admits that
 5 Fragrancebay.com Limited applied to register the BEAUTYBAY Marks with the United
 6 Kingdom Intellectual Property Office in December 2006 and the Marks were registered in August
 7 2007. eBay is without sufficient knowledge or information to form a belief as to the truth of the
 8 remaining allegations in paragraph 23, and on that basis denies them.

9 24. As to paragraph 24 of Defendants' Counterclaim, eBay admits that Defendant
 10 Dotcom applied to register the mark BEAUTY BAY with the United States Patent and
 11 Trademark Office in October 2009. eBay denies the remaining allegations in paragraph 24.

12 25. As to paragraph 25 of Defendants' Counterclaim, eBay admits that a variety of
 13 products are available on its website, including electronics, collectibles and art, home and garden
 14 products, sporting goods, clothing, books, real estate, health and beauty products, and musical
 15 instruments. eBay admits that it provides an online marketplace for buyers and sellers to buy,
 16 sell, bid on, and/or trade goods and services, and also provides online platforms, tools, and
 17 services to help individuals and small, medium, and large merchants around the globe engage in
 18 online and mobile commerce. eBay further admits that it offers merchants and individuals the
 19 ability to choose to list their products and services online either through fixed price listings or an
 20 auction-style format. eBay denies the remaining allegations in paragraph 25.

21 26. As to paragraph 26 of Defendants' Counterclaim, eBay denies the allegations in
 22 paragraph 26.

23 27. As to paragraph 27 of Defendants' Counterclaim, eBay admits that it announced a
 24 "click and collect" service in September 2013 that will allow purchasers to pick up items
 25 purchased through eBay at physical outlets in the United Kingdom. eBay further admits that it
 26 provides an online marketplace for buyers and sellers to buy, sell, bid on, and/or trade goods and
 27 services, and also provides online platforms, tools, and services to help individuals and small,
 28 medium, and large merchants around the globe engage in online and mobile commerce. eBay

1 further admits that it offers merchants and individuals the ability to choose to list their products
2 and services online either through fixed price listings or an auction-style format. eBay denies the
3 remaining allegations in paragraph 27.

4 28. As to paragraph 28 of Defendants' Counterclaim, eBay admits that an eBay
5 account associated with the user ID "fragbay" was active from 2002 to 2005. eBay admits that an
6 eBay account with the user ID "beautybaycom" became active in 2005. eBay denies the
7 remaining allegations in paragraph 28.

8 29. As to paragraph 29 of Defendants' Counterclaim, eBay admits that it sent an email
9 in 2003 to fragrancebay.org's domain registrar stating among other things that the domain name
10 fragrancebay.org "may infringe and/or dilute the famous eBay trademark." eBay denies the
11 remaining allegations in paragraph 29.

12 30. As to paragraph 30 of Defendants' Counterclaim, eBay admits that it sent an email
13 on or about October 21, 2004 regarding fragrancebay.com. eBay lacks information to admit or
14 deny the remaining allegations in paragraph 30, and therefore denies the remaining allegations in
15 paragraph 30.

16 31. As to paragraph 31 of Defendants' Counterclaim, eBay admits that in December
17 2010 it timely filed a Notice of Opposition with the USPTO objecting to Defendant Dotcom's
18 attempt to register the BEAUTY BAY mark. eBay further admits that, in its Opposition, it
19 maintains that Dotcom's application for the BEAUTY BAY mark should be denied due to
20 likelihood of confusion with, and dilution of, the famous eBay trademark. eBay denies the
21 remaining allegations in paragraph 31.

22 32. As to paragraph 32 of Defendants' Counterclaim, eBay admits that no resolution
23 has been reached with Defendants concerning their wrongful use of the BEAUTYBAY name and
24 BEAUTYBAY Marks. eBay denies the remaining allegations in paragraph 32.

25 33. As to paragraph 33 of Defendants' Counterclaim, eBay admits that in August 2012
26 eBay filed an application to invalidate Defendants' registration of the BEAUTYBAY Marks in
27 the United Kingdom. eBay further admits that it filed the Complaint in this action on June 20,
28 2013. eBay denies the remaining allegations in paragraph 33.

1 34. As to paragraph 34 of Defendants' Counterclaim, eBay admits that no resolution
2 has been reached with Defendants concerning their wrongful use of the BEAUTYBAY name and
3 BEAUTYBAY Marks. eBay further admits that, in its Complaint herein, eBay seeks among
4 other things an order and judgment requiring that Defendants be enjoined and restrained from
5 using the infringing and dilutive BEAUTYBAY name and BEAUTYBAY Marks. eBay denies
6 the remaining allegations in paragraph 34.

7 35. As to paragraph 35 of Defendants' Counterclaim, eBay denies the allegations in
8 paragraph 35.

9 36. As to paragraph 36 of Defendants' Counterclaim, eBay admits that it sent emails
10 regarding the domain names frangrancebay.org and fragrancebay.com in 2003 and 2004,
11 respectively. eBay denies the remaining allegations in paragraph 36.

12 37. As to paragraph 37 of Defendants' Counterclaim, eBay denies the allegations in
13 paragraph 37.

14 38. As to paragraph 38 of Defendants' Counterclaim, eBay denies the allegations in
15 paragraph 38.

16 39. There is no paragraph 39 in Defendants' Counterclaim.

17 40. As to paragraph 40 of Defendants' Counterclaim, eBay denies the allegations in
18 paragraph 40.

19 41. eBay realleges and incorporates paragraphs 1 through 40 above as if fully set forth
20 herein.

21 42. As to paragraph 42 of Defendants' Counterclaim, eBay admits the allegations in
22 paragraph 42.

23 43. As to paragraph 43 of Defendants' Counterclaim, eBay denies the allegations in
24 paragraph 43.

25 44. As to Defendants' Prayer for Relief in connection with their Counterclaim, eBay
26 denies that Defendants are entitled to any of the relief they seek or any relief at all.

27 WHEREFORE, eBay prays as follows:

28 1. That Defendants take nothing by reason of their Counterclaim, and that judgment

1 be rendered in favor of Plaintiff eBay;

2 2. That eBay be awarded costs of suit, including its reasonable attorneys' fees; and

3 3. For such other and further relief as the Court deems just and proper.

4
5 Dated: October 30, 2013

HOGAN LOVELLS US LLP

6
7 By: /s/ Jennifer M. Lantz

Jennifer M. Lantz

Attorneys for Plaintiff

EBAY INC., a Delaware corporation

REQUEST FOR JURY TRIAL

eBay hereby demands a trial by a jury on all issues so triable.

Dated: October 30, 2013

HOGAN LOVELLS US LLP

By: /s/ Jennifer M. Lantz

Jennifer M. Lantz

Attorneys for Plaintiff

EBAY INC., a Delaware corporation